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Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

Patricia Bonton,
Petitioner

v.

(1). United States Merit Systems Protection Board,
(2). Oklahoma City Air Logistic Center Environmental Management Directorate Pollution Prevention Division,

Defendent(s)

On Petition For Writ Of Certiorari to the United States Court Of Appeals For The Federal Circuit, Final Judgment; U.S. Merit Systems Protection Board, Final Decision; U.S. Merit Systems Protection Board, Dallas Field Office, Initial Decision.

PETITION FOR WRIT OF CERTIORARI

PATRICIA BONTON, pro se
P.O. Box 12372
Alexandria, Louisiana 71315-2372
Phone: not available

6 pp

QUESTIONS FOR REVIEW:

(1). Was the Petitioner entitled to a NOTICE OF RIGHT TO APPEAL before the U.S. Merit Systems Protection Board, Dallas Field Office, prior to the Withhold Within Grade Increase Request for Reconsideration time frame?

(2). Was the Petitioner entitled to a NOTICE OF DECISION or a WRITTEN NOTICE after the time frame for a Request for Recondsideration had expired?

(3). Did the U.S. Merit Systems Protection Board, Dallas Field Office in its INITIAL DECISION exclude its Regulation for a NOTICE OF RIGHT TO APPEAL in review of the Agency's NOTICE OF DECISION to the Petitioner?

(4). Did the U.S. Merit Systems Protection Board, Washington DC, utilize its regulation IMPROPER in review of the NOTICE OF RIGHT TO APPEAL absence in the NOTICE OF DECISION prior to the Withhold Within Grade Increase Request For Reconsideration time frame?

(5). Was the Petitioner entitled to an Appeal before the U.S. Merit Systems Protection Board without a NOTICE OF RIGHT TO APPEAL in the Agency's NOTICE OF DECISION ?

(6). Did the U.S. Courts Of Appeal For The Federal Circuit utilize the U.S. Merit Systems Protection Board[M.S.P.B] regulation for a NOTICE OF RIGHT TO APPEAL IMPROPER in determining their APPELLATE JURISDICTION?

(7). Did the U.S. Court of Appeals For The Federal Circuit Final Judgment exemplify Prosecution and General Findings for the Agency's Action[OKLAHOMA CITY AIR LOGISTIC CENTER]?

(8). Which Courts breached the Constitutional Ammendment Article V?

(9). Did the Agency breached its regulation in denial of a Notice of Decision or a Written Notice after the Request For Reconsideration time frame had expired?

(10). Was the Petitioner entitled to INTERIM RELIEF, BILL OF COSTS AWARD, AND A PETITION FOR REHEARING in Judgment from the U.S. Court Of Appeals For The Federal Circuit?

(11). Did the recaption of the Case in Judgment from the U.S. Court Of Appeals For The Federal Circuit breach the Constitutional Ammendment Article V? (12). Was the Petitioner WGI, Appraisal, and Withhold WGI proper to exemplify DUE PROCESS OF LAW?

LIST OF PARTIES

(1). Patricia A. Bonton, PETITIONER

(2). United States Merit Systems Protection Board, Washington DC, DEFENDENT

(3). United States Merit Systems Protection Board, Dallas Field Office, DEFENDENT

(4). United States Court Of Appeals For The Federal Circuit, DEFENDENT

(5). Oklahoma City Air Logistic Center, Environmental Management Directorate Pollution Prevention Division, DEFENDENT

CORPORATE DISCLOSURE STATEMENT

The Petitioner is in representation as a pro se ligitant, whereby, a nongovernmental corporation do not exist. There exist no parent corporation(s) and listing of any publicly held company that owns 10% or more of the corporation's stock

A Corporation Disclosure Statement has been filed in this case in the U.S. Court Of Appeals For The Federal Circuit; but, no other prior document have been filed in the Supreme Court which contains a Corporation Disclosure Statement. Therefore, no ammendments are made.

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TABLE OF CITED AUTHORITIES

I. CONSTITUTION AMMENDMENTS:
(1). Article III, Section 1. (2). Article III, Section 2, para.1. (3). Article II, Section 2, para 2. (4). Article IV, para 2. (5). Article V. (6). Article VI.
II. STATUTES AND REGULATIONS AND RULES:
(1). 28 U.S.C §453, §1251, §1254, §2101. (2). AFI 36-1001(10.4), (10.5), (10.8), (10.9). (3). 5 U.S.C. §101, §105, §111, §301, §551, §1104, §1204, §4301, §4302, §4303, §5335, §7701, §7703. (4) 5 CFR PART 430, §101, §102, §201- §204, §206 - §208. (5). 5 CFR PART 531, §401 - §406, §409- §412. (6). 5 CFR PART 1201, §4 and §21. (7). FRE 401, 1003, 103(a). (8). FRAP 11(e)(1). (9). FRCP 17(a). (10). FRCrP 32(d), 52(a). (11). DOD 1400.25-M.

I. LIST OF CITATIONS

I. U.S. Merit Systems Protection Board Dallas Field Office

(a). Document: MEMORANDUM OF TELEPHONE CONFERENCE.

1. 438 U.S.567, 575-76(1978), Furnco Construction Co. v. Waters. 2. 73 M.S.P.R. 476,497(1997), Buckler v. Federal Retirement Thrift Investment Board. 3. 772 F.2d 856, 859-60(Fed.Cir. 1985), Mercer v. Department of Health & Human Services.

(b). Document: SHOW CAUSE ORDER JURISDICTION.

1. 67 M.S.P.R. 573(1995), Johnson v. United States Postal Service. 2. 58 M.S.P.R. 450,453(1992), Shaishaa v. Department of the Army. 3. 7 M.S.P.R. 218, 228-29 (1981), Cody v. Department of Justice. 4. 807 F.2d 1577, 1582-83(Fed.Cir. 1986), Wilson v. Merit Systems Protection Board. 5. 742 F.2d 1424, 1427-28(Fed Cir. 1984), Manning v. Merit Systems Protection Board. 6. 789 F.2d 892, 894 (Fed.Cir. 1986), Dumas v. Merit Systems Protection Board. 7. 758 F.2d 641, 643 (Fed.Cir.1985), Burgess v. Merit Systems Protection Board.

(c). Document: INITIAL DECISION

1. 50 M.S.P.R. 193, 197-98(1991), Popham v. United States Postal Service. 2. 699 F.2d 1312, 1314 (Fed.Cir.), Stern v. Department of the Army. 3. 462 U.S. 1122(1983). 4. 39 M.S.P.R.586, 588(1989), Shaw v. Department of the Navy. 5. 74 M.S.P.R.112(1997), Joyce v. Department of the Air Force. 6. 91 F.3d 117,119 (Fed.Cir 1996), Manley v. Department of the Air Force. 7. 58 M.S.P.R. 450,453 (1992), Shaishaa v. Department of the Army. 8. MSPB Docket No. DA-0432-99-0170-I-1, Bonton v. Department of the Air Force. 9. 77 M.S.P.R. 332, 335(1998), Priselac v. Department of the Navy. 10. 53 M.S.P.R. 318, 319(1992), Kramer v. United States Postal Service. 11. 53 M.S.P.R. 44, 48 (1992), D'Leo v. Department of the Navy. 12. 53 M.S.P.R. 168, 170 (1992), Fogerty v. Department of the Treasury. 13. 2 M.S.P.R. 1, 2(1980), Wren v. Department of the Army. 14. 681 F.2d 867, 871-73 (D.C. Cir. 1982), aff'd sub nom. Wren v. Merit Systems Protection Board. 15. 742 F.2d 1424, 1427-28 (Fed.Cir. 1984), Manning v. Merit Systems Protection Board. 16. 40 M.S.P.R. 438, 442 (1989), Godfrey v. Veterans Administration

II. United States Merit Systems Protection Board, Washington DC

(a). Document: FINAL ORDER

1. 931 F.2d 1544 (Fed.Cir. 1991), Pinat v. Office of Personnel

Management.

III. United States Court Of Appeals For The Federal Circuit

(a). Document: PETITION FOR REVIEW.

1. Same citations as in Initial Decision. (2). Same citations as in the Final Order.

(b). Document: APPELLANT FORMAL BRIEF AND APPENDIX.

1. Brown v. Board Of Education (1962). 2. 758 F.2d 641(1985), Bridgett L. Burgess v. Merit System Protection Board. 3. 772 F.2d 887 (1985), Rudolph S. Gonzales v. Defense Logistics Agency. 4. M.S.P.B. Docket No. DA-0432-99-0203-I-1, Bonton v. Department of the Air Force.

(c). Document: RESPONDENT'S MOTION TO RECAPTION

1. 978 F.2d 679, 689 (Fed.Cir. 1992), Spruill v. Merit Systems Protection Board.

(d). Document: ORDER DATED, JAN.12.2000.

1. 978 F.2d 679, 686(Fed.Cir. 1992), Spuill v. Merit Systems Protection Board.

(e). Document: ENTRY OF JUDGMENT

1. 197 F.3d 1144, 1147 (Fed.Cir. 1999), Van Wersch v. Department of Health & Human Services. 2. 55 F.3d 1547, 1576 (Fed.Cir. 1995), Todd v. Merit Systems Protection Board. 3. 47 F.3d 409, 410 (Fed.Cir.1995), Forest v. Merit Systems Protection Board. 4. 91 F.3d 117, 119 (Fed.Cir.1996), Manley v. Department of the Air Force. 5. 58 M.S.P.R. 450, 454 (1992), Shaishaa v. Department of the Army.

(f). Document: APPELLEE BRIEF AND APPENDIX.

1. 53 M.S.P.R. 44 (1992), D' Leo v. Department of the Navy. 2. 53 M.S.P.R. 44 (1992), Fogerty v. Department of Treasury. 3. 727 F.2d 1535 (Fed.Cir. 1984), Hayes v. Department of the Navy. 4. 759 F.2d 9 (Fed.Cir. 1985), Maddox v. Merit Systems Protection Board. 5. 91 F.3d 117 (Fed.Cir. 1996), Manley v. Department of the Air Force. 6. 695 F.2d 1389 (Fed.Cir. 1982), Phillips v. United States Postal Service. 7. 699 F.2d 1312 (Fed.Cir.); 462 U.S. 1122(1983), Stern v. Department of the Army. 8. 2 M.S.P.B. 1 (1980), Wren v. Department of the Army.

II. STATEMENT OF JURISDICTION

The Supreme Court Jurisdiction is confined as prescribed in the U.S. Constitution Ammendment Article III, Section 1 and 2. Where,

Judicial Power[1] of the United States is vested in one Supreme Court. And, that Judicial Power[1] is extended to all cases, in Law and Equity, arising under the U.S. Constitution, the Laws of the United States and to controveries to which the United States shall be a party. Not excluding, U.S. Constitution Ammendment Article III, Section 2, para. 2. Where, the Supreme Court shall have Appellant Jurisdiction to controveries to which the United States shall be a party, both as to law and fact with such exceptions and under such regulations as Congress shall make. Under 28 U.S.C. § 1251, Congress has stated no EXCEPTIONS for controveries to which the United States shall be a party . Yet, under 28 U.S.C. § 1254 prescribes for cases in the Courts of Appeals may be reviewed by the Supreme Court by WRIT OF CERTIORARI granted upon Petition of any party to any CIVIL or CRIMINAL case after rendition of Judgment or Decree. Further, under 28 U.S.C. § 2101(c) prescribes for any other Appeal or any WRIT OF CERTIORARI intended to bring judgment or Decree in a Civil Action, Suit, or Proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. The Case in Petition on a WRIT OF CERTIORARI for review is Appeal from a PETITION OF REVIEW in the U.S. Court of Appeals For The Federal Circuit, which is an integral part of the Court of Appeals. Which, an ENTRY OF JUDGMENT, dated July.12.2000, rendered; a Petition For Rehearing Denial JUDGMENT, dated Aug.04.2000. Where, the Entry of Judgment mandates of the Court were scheduled for Sep.05.2000.

III. CONSTITUTION PROVISIONS, STATUTES, AND REGULATIONS

As prescribed in Supreme Court Rule 14 (f), the U.S. Constitution Ammendment Provisions are:

1. U.S. Constitution Ammendment Article III, Section 1. The

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[1] Judicial Power ,referred in paragraph, is the ability to excercise, act, or carry-out Judicial authority arising under the U.S. Constitution, in Law and Equity, the Laws of the United States and Treaties made or which shall be made, as Congress shall make. [2] Judicial authority, as referred above in footnote, are all acts which administers and processes the authority in the U.S. Constitution, in Laws and Equity, the Laws of the United States, and Treaties made or which shall be made, of [in] the United States yielding controls and prosecution for all matters of harm or potential harm throughout the United States.

Judicial Power of the United Stated, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both supreme and inferior courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not diminished during their Continuance in Office.

2. U.S. Constitition Ammendment Article III, Section 2, Para. 1
The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; — between a State and Citizens of another State; —between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

3. U.S. Constitution Ammendment Article III, Section 2, para. 2.
In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.

4. U.S. Constitution Ammendment Article VI, para.2.
This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

5. U.S. Constitution Ammendment Article V.
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in

jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6. U.S. Constitution Ammendment Article VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Regulations and Statutes are:

7. 28 U.S.C. §1251; ORIGINAL JURISDICTION.

(a). The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states. (b). The Supreme Court shall have original but not exclusive jurisdiction of: (1). All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties; (2). All controversies between the United States and a State; (3). All actions or proceedings by a State against the citizens of another State or against aliens.

8. 28 U.S.C. §1254; COURTS OF APPEALS; CERTIORARI; CERTIFIED QUESTIONS. Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1). By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; (2). By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

9. 28 U.S.C. §2101(c); SUPREME COURT; TIME FOR APPEAL OR CERTIORARI; DOCKETING; STAY. (c). Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ certiorari

for a period not exceeding sixty days.

10. AFI 36-1001, Chapter 10, Section 10.4; POSTPONING WGI. Postpone giving the WGI to a GS or FWS employee when either condition in paragraphs 10.4.1 and 10.4.2 exists: (10.4.1). The employee's performance is less than fully-successful and you have not given the employee a performance plan or explained the specific requirements for fully-successful performance at least 30 calendar days before the end of the waiting period. Notify the CPF that you intend to postpone granting a WGI. (10.4.2). The employee was reassigned or demoted due to unacceptable performance and is eligible within 60 calendar days for a WGI. * The CPF notifies the supervisor of the increase due date and the requirement to postpone. (10.4.3). Under either condition, the supervisor must notify the employee in writing that: * WGI is being postpone. * Reason for postponement. * The employee has no more than 90 calendar days to demonstrate fully-successful performance. (10.4.4). Give the employee a new or revised performance plan setting the performance elements and standards to be met during the 90-day period. (10.4.5). When the employee attains fully-successful performance any time after the 60th calendar day, but not later than the 90th calendar day, complete the appraisal form and send it to the CPF. The employee receives the WGI retroactive to the original date due. (10.4.6). If the employee's performance remains less than fully-successful after the 90th calendar day, the supervisor must withhold WGI. Complete the appraisal form; send it to the CPF; and comply with paragraph 10.5.

11. AFI 36-1001, Chapter 10, Section 10.5; WITHHOLDING WGI. Withhold WGI when: * The employee's rating of record is fully-successful, but actual performance has deteriorated to less than fully-successful. * The employee's rating of record is less than fully-successful (DCPDS will not process WGI if the last assigned rating is less than fully-successful). * The employee fails to demonstrate fully-successful performance during the 90-day postponement period. (10.5.1). When an employee's performance deteriorates to less than fully-successful, the supervisor must: * Complete the appraisal form to notify the CPF of the decision to issue a new rating and deny WGI. * Give a copy of the rating to the employee. * After coordination with the CPF, give the employee a letter explaining the decision to deny WGI no later than 30 calendar days

before WGI due date(see Figure 10.1 for sample) (10.5.2). A letter of decision to withhold a WGI must contain: * The specific performance element and standard that the employee is not fulfilling. *An explanation of how the employee must improve performance to receive a WGI. * A statement of the employee's right to representation. * A statement that the employee or the employee's representative may request reconsideration of the decision no later than 15 calendar days after receiving the letter. * The name and address of the official to whom the employee may-send a reconsideration request. * Information advising the employee: * To file any reconsideration request in writing and state why the decision deserves reconsideration. * To state in the reconsideration request if the employee or employee's representative also wants to reply orally to the decision. * A statement that the employee and the employee's representative may review the file containing all pertinent documents. * The file's location, how to review the file, and the name, office symbol, location, and telephone number of the person with whom to make review arrangements. * A statement granting the employee and the employee's representative a reasonable amount of time to review the material and prepare a response. NOTE: A standard definition of " reasonable" is impossible. You must base the amount of time you give for each case on the particulars of that situation, such as the amount of and type of material involved and the difficulty in obtaining assistance. If the employee is covered by a bargaining agreement, you must follow the provisions of the agreement. * A statement that the employee may request a time extension if sufficient reason exists.

12. AFI 36-1001, Chapter 10, Section 10.8; WHEN WITHHOLDING WGI REMAINS IN EFFECT. (10.8.1). Inform the employee in writing of the reasons for the decision and explain the employee's appeal rights to the Merit System Protection Board (5 CFR 531.410(d)). (10.8.2). For an employee covered by a collective bargaining agreement, a reconsideration decision that sustains a negative determination is only reviewable in accordance with the terms of the agreement.

13. AFI 36-1001, Chapter 10, Section 10.9; ACTION AFTER WGI IS WITHHELD. After withholding WGI, the supervisor may grant WGI when the employee demonstrates sustained fully-successful performance. (10.9.1). The supervisor will review the performance

for an acceptable level of competence determination every 90 - 180 days and again no more than 1 year after the original WGI eligibility date. The supervisor who denies WGI must make annual decisions on the employee's level of competence. (10.9.2). If the employee's performance improves to a fully-successful level after having WGI withheld, the supervisor completes the appraisal form, and sends it to the CPF. * The employee then receives WGI (nonretroactively) at the beginning of the first pay period after the CPF receives the form. (10.9.3). If the employee's performance does not improve to at least a fully-successful level after remedial action and within a reasonable period of time after originally withholding WGI, the supervisor works with the CPF to determine other corrective or administrative action.

14. 5 U.S.C. §4301(1) and (3); DEFINITIONS. For the purpose of this subchapter —(1). "agency" means — (A). an Executive agency; and (B). the Government Printing Office; but does not include— (i). a Government corporation; (ii). the Central Intelligence Agency, the Defense Intelligence Agency, the Central Imagery Office, the National Security Agency, or any Executive Agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or (iii). the General Accounting Office; (3). "unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

15. 5 U.S.C. §105; EXECUTIVE AGENCY. For the purpose of this title, " Executive agency" means an Executive department, a Government corporation, and an independent establishment.

16. 5 U.S.C. §101; EXECUTIVE DEPARTMENTS. The Executive departments are: The Department of State. The Department of the Treasury. The Department of Defense. The Department of Justice. The Department of the Interior. The Department of Agriculture. The Department of Commerce. The Department of Labor. The Department of Health and Human Services. The Department of Housing and Urban Development. The Department of Transportation. The Department of Energy. The Department of Education. The Department of Veterans Affairs.

17. 10 U.S.C. §111(a),(b); EXECUTIVE DEPARTMENT. (a). The Department of Defense is an executive department of the United

States. (b) The Department is composed of the following: (1). The Office of the Secretary of Defense. (2). The Joint Chiefs of Staff. (3). The Joint Staff. (4). The Defense Agencies. (5). Department of Defense Field Activities. (6). The Department of the Army. (7). The Department of the Navy. (8). The Department of the Air Force. (9). The unified and specified combatant commands. (10). Such other offices, agencies, activities, and commands as may be established or designated by law or by the President. (11). All offices, agencies, activities, and commands under the control or supervision of any element named in paragraphs (1) through (10).

18. 5 U.S.C. §4302(a) and (b)(1, 2, 3, 5), ESTABLISHMENT OF PERFORMANCE APPRAISAL SYSTEMS. (a). Each agency shall develop one or more performance appraisal systems which— (1). provide for periodic appraisals of job performance of employees; (2). encourage employee participation in establishing performance standards; and (3). use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees. (b). Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for— (1). establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system; (2). as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position; (3). evaluating each employee during the appraisal period on such standards;... (5). assisting employees in improving unacceptable performance; and ...

19. 5 U.S.C. §4303(a), (b)(1)(A), and(c), ACTIONS BASED ON UNACCEPTABLE PERFORMANCE. (a). Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance. (b)(1). An employee whose reduction in grade or removal is proposed under this section is entitled to— (A). 30 days' advance written notice of the proposed action which identifies— (i). specific instances of unacceptable performance by the employee on which the proposed action is

based; and (ii). the critical elements of the employee's position involved in each instance of unacceptable performance; ... (c). The decision to retain, reduce in grade, or remove an employee— (1). shall be made within 30 days after the date of expiration of the notice period, and (2). in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee— (A). which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and (B). for which the notice and other requirements of this section are complied with.

20. 5 CFR §430.101; AUTHORITY. Chapter 43 of title 5, United States Code, provides for the performance appraisal of Federal employees. This subpart supplements and implements this portion of law.

21. 5 CFR §430.102(a) and (b)(4); PERFORMANCE MANAGEMENT. (a). Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals. (b). Performance management integrates the processes an agency uses to— ...(4). Assess and improve individual, team, and organizational performance; ...

22. 5 CFR §430.201(a) and (c)(3); GENERAL. (a). STATUTORY AUTHORITY. Chapter 43 of title 5, United States Code, provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management(OPM) to prescribe regulations governing such systems. The regulations in this subpart in combination with statute set forth the requirements for agency performance appraisal system(s) and program(s) for employees covered by subchapter I of chapter 43... (c)(3). EQUIVALENT RATINGS OF RECORD. When the performance evaluation does not include a summary level designator and pattern comparable to those established at § 430.208(d), the agency may identify a level and pattern based on information related to the appraisal process.

23. 5 CFR §430.202(a)(2); COVERAGE. (a). EMPLOYEES AND AGENCIES COVERED BY STATUTE... (2). Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. Besides General Schedule(GS/GM) and prevailing rate

employees, coverage includes, but is not limited to, senior-level and scientific and professional employees paid under 5 U.S.C. § 5376.

24. 5 CFR §430.203; DEFINITIONS. In this subpart, terms are defined as follows: ...APPRAISAL means the process under which performance is reviewed and evaluated. APPRAISAL PERIOD means the established period of time for which performance will be reviewed and a rating of record will be prepared. APPRAISAL PROGRAM means the specific procedures and requirements established under the policies and parameters of an agency appraisal system. APPRAISAL SYSTEM means a framework of policies and parameters established by an agency as defined at 5 U.S.C. §4301(1) for the administration of performance appraisal programs under subchapter I of chapter 43 of title 5, United States Code, and this subpart. CRITICAL ELEMENT means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level. NON-CRITICAL ELEMENT means a dimension or aspect of individual, team, or organizational performance, exculsive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance. PERFORMANCE means accomplishment of work assignments or responsibilities. PERFORMANCE RATINGmeans all of the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) of each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern(as specified in § 430.208.(d). PERFORMANCE PLAN means all of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards. PERFORMANCE STANDARD means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance...RATING OF RECORD means the performance rating prepared at the end of an

appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level within a pattern (as specified in §430.208(d)), or (2) in accordance with § 531.404(a)(1) of this chapter. These constitute official ratings of record referenced in this chapter.

25. 5 CFR §430.204(a), (b)(1)(i),(ii),(iii),(v), (b)(3),(5); AGENCY PERFORMANCE APPRAISAL SYSTEM(S). (a). Each agency as defined at section 4301(1) of title 5, United States Code, shall develop one or more performance appraisal systems for employees covered by this subpart. (b). An agency appraisal system shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency for the employees covered by the system. At a minimum, a agency system shall— (1). Provide for— (i). Establishing employee performance plans, including, but not limited to, critical elements and performance standards; (ii). Communicating performance plans to employees at the beginning of an appraisal period; (iii). Evaluating each employee during the appraisal period on the employee's elements and standards; ...(v). Assisting employees in improving unacceptable performance; and...(3). Specify the flexibilities an agency program established under the system has for setting— (i). The length of the appraisal period (as specified in §430.206(a)); (ii). The length of the minimum period (as specified in §430.207(a)); (iii). The number(s) of performance levels at which critical and non-critical elements may be appraised (as specified in §430.206(b)(7) (i)(A) and (ii)(A)); and (iv). The pattern of summary levels that may be assigned in a rating of record (as specified in §430.208(d)); ... (5). Require that an appraisal program shall conform to statute, the regulations of this chapter, and the requirements established by the appraisal system

26. 5 CFR §430.206(a)(2), (b)(1)- (4), (7), (8)(i), (ii); PLANNING PERFORMANCE. (a)...(2). Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively. (b). PERFORMANCE PLAN. (1). Agencies shall encourage employee participation in establishing performance plans. (2). Performance plans shall be provided to employees at the

beginning of each appraisal period (normally within 30 days). (3). An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities. (4). Each performance plan shall include elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s)...(7). An appraisal program shall establish how many and which performance levels may be used to appraise critical and non-critical elements. (8). Elements and standards shall be established as follows—(i). For a critical element—(A). At least two levels for appraisal shall be used with one level being "Fully Successful" or its equivalent and another level being " Unacceptable," and (B). A performance standard shall be established at the " Fully Successful" level and may be established at other levels. (ii). For non-critical elements, when established,—(A). At least two levels for appraisal shall be used, and (B). A performance standard(s) shall be established at whatever level(s) is appropriate.

27. 5 CFR §430.207(a), (c), (d), MONITORING PERFORMANCE. (a). MINIMUM PERIOD. An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared....(c). MARGINAL PERFORMANCE. Appraisal programs should provide assistance whenever performance is determined to be below " Fully Successful" or equivalent but above " Unacceptable. " (d). UNACCEPTABLE PERFORMANCE. An appraisal program shall provide for— (1). Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; and (2). Taking action based on unacceptable performance.

28. 5 CFR §430.208(a)(1),(3); (b)(1); (d)(1-3);(e);(i)(1-3), RATING PERFORMANCE. (a). As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee. (1). A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period....(3). Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures. (b)(1). A Level 1 summary

(" Unacceptable") shall be assigned if and only if performance on one or more critical elements is appraised as "Unacceptable. " ... (d). SUMMARY LEVELS. (1). An appraisal program shall use one of the following patterns of summary levels:...(2). Within any of the patterns shown in paragraph (d)(1) of this section, summary levels shall comply with the following requirements: (i). Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest; (ii). Level 1 is " Unacceptable"; (iii). Level 3 is " Fully Successful" or equivalent; and (iv). Level 5 is "Outstanding" or equivalent. (3). The term " Outstanding" shall be used only to described a Level 5 summary. (e). A rating of record of "Unacceptable" (Level 1) shall be reviewed and approved by a higher level management official....(i). When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—(1). Within 60 days of issuance based upon an informal request by the employee; (2). As a result of grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding; or (3). Where the agency determines that a rating of record was incorrectly recorded or calculated.

29. 5 CFR §531.401(c),(d), Subpart D— WITHIN GRADE INCREASES, PRINCIPAL AUTHORITIES. The following are the principal authorities for the regulations in this subpart:...(c). Section 5338 of title 5, United States Code, provides that " The Office of Personnel Management may prescribe regulations necessary for the administration" of General Schedule(GS) pay rates, including within-grade increases. (d). Section 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103-89) provides that " the Office of Personnel Management shall prescribe regulations necessary for the administration of this section. "

30. 5 CFR §531.402(a), EMPLOYEE COVERAGE. (a). Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid

under the General Schedule and who are paid less than the maximum rate of their grades. ...

31. 5 CFR §531.403, DEFINITIONS. In this subpart: ACCEPTABLE LEVEL OF COMPETENCE means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of §531.404 of this subpart, as determined by the head of the agency. AGENCY means an agency defined in section 5102 of title 5, United States Code. CALENDAR WEEK means a period of any seven consecutive calendar days. CRITICAL ELEMENT has the meaning given that term in §430.203 of this chapter. EMPLOYEE means an employee of an agency. PERMANENT POSITION means a position filled by an employee whose appointment is not designated as temporary by law and does not have a definite time limitation of one year or less. " Permanent position" includes a position to which an employee is promoted on a temporary or term basis for at least one year. RATE OF BASIC PAY means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind SCHEDULED TOUR OF DUTY means any work schedule established for an employee in accordance with the regular procedures for the establishment of workweeks in § 610.111 of this chapter. For a full-time employee this includes the basic 40-hour workweek. For a part-time employee this is any regularly schedule work of less than 40-hours during the administrative workweek. WAITING PERIOD means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase. WITHIN-GRADE INCREASE is synonymous with the term "step Increase" used in section 5335 of title 5, United States Code, and means—(1). A periodic increase in an employee's rate of basic pay from one step of the grade of his or her position to the next higher step of that grade in accordance with section 5335 of title 5, United States Code, and this subpart; or...

32. 5 CFR §531.404(a)(2), (b),(c); EARNING WITHIN-GRADE INCREASE. An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grad or the next higher rate within the grade (as defined in §531.403) upon meeting the following three

requirements established by law: (a). The employee's performance must be at an acceptable level of competence, as defined in this subpart. To be determined at an acceptable level of competence, the employee's most recent rating of record(as defined in § 430.203 of this chapter) shall be at least Level 3 ("Fully Successful" or equivalent)....(2). The rating of record used as the basis for an acceptable level of competence determination for a within-grade Increase must have been assigned no earlier than the most recently completed appraisal period. (b). The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position. (c). The employee must not have received an equivalent increase during the waiting period.

33. 5 CFR §531.405(a)(1),(b); WAITING PERIODS FOR WITHIN-GRADE INCREASE. (a). LENGHT OF WAITING PERIOD. (1). For an employee with a schedule tour of duty, the waiting periods for advancement to the next higher step in all General Schedule grades (or the next higher rate within the grade, as defined in § 531.403) are: (i). Rate of basic pay less than the rate of basic pay at step 4—52 calendar weeks of creditable service; (ii). Rate of basic pay equal to or greater than the rate of basic pay at step 4 and less than the rate of basic pay at step 7—104 calendar weeks of creditable service; and (iii). Rate of basic pay equal to or greater than the rate of basic pay at step 7—156 calendar weeks of creditable service....(b). COMMENCEMENT OF A WAITING PERIOD. A waiting period begins; (1). On the first appointment as an employee of the Federal Government, regardless of tenure; (2). On receiving an equivalent increase; or (3). After a period of nonpay status or a break in service (alone or in combination) in excess of 52 calendar weeks, unless the nonpay status or break in service is creditable service under § 531.406 of this subpart.

34. 5 CFR §531.406(b)(2); CREDITABLE SERVICE....(b). SERVICE CREDITABLE FOR ONE WITHIN-GRADE INCREASE....(2). Time in a nonpay status (based upon the tour of duty from which the time was charged) is creditable service in the computation of a waiting period for an employee with a schedule tour of duty when it does not exceed an aggregate of: (i). Two workweeks in the waiting period for an employee whose rate of basic pay is less than the rate of basic pay for step 4 of the applicable grade; (ii). Four workweeks in the waiting period for an employee whose rate of

basic pay is equal to or greater than the rate of basic pay for step 4 of the applicable grade and less than the rate of basic pay for step 7 of the applicable grade; and (iii). Six workweeks in the waiting period for an employee whose rate of basic pay is equal to or greater than the rate of basic pay for step 7 of the applicable grade. Except as provided in paragraph (c) of this section, time in a nonpay status in excess of the allowable amount shall extend a waiting period by the excess amount.

35. 5 CFR § 531.409(a), (b), (c)(2)(i),(e); ACCEPTABLE LEVEL OF COMPETENCE DETERMINATIONS. (a). RESPONSIBILITY. The head of the agency or other agency official to whom such authority is delegated shall determine which employees are performing at an acceptable level of competence. (b). BASIS FOR DETERMINATION. When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter...(c). DELAY IN DETERMINATION...(2). When an acceptable level of competence determination has been delayed under this subpart: (i). The employee shall be informed that his or her determination is postpone and the appraisal period extended and shall be told of the specific requirements for performance at an acceptable level of competence. ...(e). NOTICE OF DETERMINATION. (1). A level of competence determination shall be communicated to an employee in writing as soon as possible after completion of the waiting period or other period upon which it was based. (2). When the head of an agency or his or her designee determines that an employee's performance is not at an acceptable level of competence, the negative determination shall be communicated to the employee in writing and shall: (i). Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart. (ii). Inform the employee of his or her right to request that the appropriately designated agency official reconsider the determination.

36. 5 CFR §531.410(a)(1-4), (b),(d); RECONSIDERATION OF A NEGATIVE DETERMINATION. (a). When an agency head, or his or her designee, issues a negative determination the following procedures are established in accordance with section 5335(c) of the title 5, United States Code for reconsideration of the negative determination: (1). An employee or an employee's personal

representative may request reconsideration of a negative determination by filing, not more than 15 days after receiving notice of determination, a written response to the negative determination setting forth the reasons the agency shall reconsider the determination; (2). When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including...(3). An employee in a duty status shall be granted reasonable amount of official time to review the material relied upon to support the negative determination and to prepare a response to the determination; and(4). The agency shall provide the employee with a prompt written final decision. (b). The time limit to request a reconsideration may be extended when the employee shows he or she was not notified of the time limit and was not otherwise aware of it, or that the employee was prevented by circumstances beyond his or her control from requesting reconsideration with the time limit ...(d). When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit System Protection Board....

37. 5 CFR §531.411. CONTINUING EVALUATION AFTER WITHHOLDING A WITHIN-GRADE INCREASE. When a within-grade increase has been withheld, an agency may, at any time thereafter, prepare a new rating of record for the employee and grant the the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

38. 5 CFR §531.412(a), EFFECTIVE DATE OF A WITHIN-GRADE INCREAE. (a). Except as provided in paragraph(b) of this section, a within-grade increase shall be effective on the first day of the first pay period following completion of the required waiting period and in compliance with the conditions of eligibility. Interim within-grade increases shall become effective as provided in ...

39. 5 U.S.C. §5335(a), (c); PERIODIC STEP-INCREASES. (a). An employee paid on an annual basis, and occupying a permanent position within the scope of the General Schedule, who has not reached the maximum rate of pay for the grade in which his position is placed, shall be advanced in pay successively to the next higher rate within the grade at the beginning of the next pay period following completion of—(1). each 52 calendar weeks of service in pay rates 1, 2 and 3; (2). each 104 calendar weeks of service in pay rates 4, 5, and 6; or (3). each 156 calendar weeks of service in pay rates 7, 8, and 9; subject to the following conditions: (A). the employee did not receive an equivalent increase in pay from any cause during that period; and (B). the work of the employee is of an acceptable level of competence as determined by the head of the agency...(c). When a determination is made under subsection (a) of this section that the work of an employee is not of an acceptable level of competence, the employee is entitled to prompt written notice of that determination and an opportunity for reconsideration of the determination within his agency under uniform procedures prescribed by the Office of Personnel Management. If the determination is affirmed on reconsideration, the employee is entitled to appeal to the Merit System Protection Board . If the reconsideration or appeal results in a reversal of the earlier determination, the new determination supersedes the earlier determination and is deemed to have been made as of the date of the earlier determination...

40. 5 U.S.C. § 7701(a),(b)(1),(2)(A) and(B); (c)(1) and (2); (e)(1), (f), (h), (i)(4); APPELLATE PROCEDURES. (a). An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right—(1). to a hearing for which a transcript will be kept; and (2). to be represented by an attorney or other representative. Appeals shall be processed in accordance with regulations prescribed by the Board. (b)(1). The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3102 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by

the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee(as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management. (2)(A). If an employee or applicant for employee is the prevailing party in an appeal under this subsection, the employee or applicant shall be granted the relief provided in the decision effective upon the making of the decision, and remaining in effect pending the outcome of any petition for review under subsection(e), unless—(i). the deciding official determines that the granting of such relief is not appropriate; or (ii)(I). the relief granted in the decision provides that such employee or applicant shall return or be present at the place of employee during the period pending the outcome of any petition for review under subsection(e); and (II). the employing agency, subject to the provisions of subparagraph (B), determines that the return or presence of such employee or applicant is unduly disruptive to the work environment. (B). If agency makes a determination under subparagraph (A)(ii)(II) that prevents the return or presence of an employee at the place of employment, such employee shall receive pay, compensation, and all other benefits as terms and conditions of employment during the period pending the outcome of any petition for review under subsection (e).... (c)(1). Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision—(A). in the case of an action based on unacceptable performance described in section 4303 or a removal from the Senior Executive Service for failure to be recertified under section 3393a, is supported by substantial evidence; or (B). in any other case, is supported by a preponderance of the evidence.(2). Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment—(A). shows harmful error in the application of the agency's procedures in arriving at such decision; (B). shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or (C). shows that the decision was not in accordance with law.... (e)(1). Except as

provided in section 7702 of this title, any decision under subsection(b) of this section shall be final unless—(A). party to the appeal or the Director petitions the Board for review within 30 days after receipt of the decision; or (B). the Board reopens and reconsiders a case on its own motion. The Board, for good cause shown, may extend the 30-day period referred to in subparagraph (A) of this paragraph. One member of the Board may grant a petition or otherwise direct that a decision be reviewed by the full Board. The preceding sentence shall not apply if, by law, a decision of an administrative law judge is required to be acted upon by the Board.... (f). The Board, or an administrative law judge or other employee of the Board designated to hear a case, may—(1). consolidate appeals filed by two or more appellants, or (2). join two or more appeals filed by the same appellant and hear and decide them concurrently, if the deciding official or officials hearing the cases are of the opinion that the action could result in the appeals' being processed more expeditiously and would not adversely effect any party....(h). The Board may, by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be applicable at the election of an applicant for employment or of an employee who is not in a unit for which a labor organization is accorded exclusive recognition, and shall in lieu of other procedures provided for under this section. A decision under such a method shall be final, unless the Board reopens and reconsiders a case at the request of the Office of Personnel Management under subsection(e) of this section. (i)(4). It shall be the duty of the Board, an administrative law judge, or employee designated by the Board to hear any proceeding under this section to expedite to the extent practicable that proceeding.

41. 5 U.S.C. §7703(a), (b)(1), (c) ; JUDICIAL REVIEW OF DECISIONS OF THE MERIT SYSTEMS PROTECTION BOARD. (a)(1). Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision. (2). The Board shall be named respondent in any proceeding brought pursuant to this subsection, unless the employee or applicant for employment seeks review of a final order or decision on the merits on the underlying personnel action or on a request for attorney fees, in which case the agency responsible for

taking the personnel action shall be the respondent. (b)(1). Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board....(c). In any case filed in the United States Court of Appeals for the Federal Circuit , the court shall review the record and hold unlawful and set aside any action, findings, or conclusions found to be—(1). arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2). obtained without procedures required by law, regulation have been followed or (3). unsupported by substantial evidence; except that in the case of discrimination brought under any section referred to in subsection(b)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

42. 5 CFR §1201.3(a)(5); APPELLATE JURISDICTION. (a). GENERALLY. The Board has jurisdiction over appeals from agency actions when the appeals are authorized by law, rule, or regulation. These include appeals from the following actions: ....(5). Reconsideration decision sustaining a negative determination of competence for a general schedule employee (5 CFR 531.410; 5 U.S.C. 5335(c))...

43. 5 CFR §1201.4(f), (g); GENERAL DEFINITIONS. ...(f). APPEAL. A request for review of an agency action....(g). PETITION FOR REVIEW. A request for review of an initial decision of a judge.

44. 5 CFR §1201.21(a-d); NOTICE OF APPEAL RIGHTS. When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following: (a). Notice of the time limits for appealing to the Board, the requirements of §1201.22(c), and the address of the appropriate Board office for filing the appeal; (b). A copy, or access to a copy, of the Board's regulations; (c). A copy of the appeal form in appendix I of this part; and (d). Notice of any right the employee has to file a grievance.

45. 5 U.S.C.§551(6), (13); DEFINITIONS. (6). " ORDER " means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but include licensing. ...

(13). "AGENCY ACTION" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act; and....

46. 5 U.S.C. §301; DEPARTMENTAL REGULATIONS. The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, paper, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public.

47. 5 U.S.C. §1204(a)(1),(f)(4); POWERS AND FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD. (a). The Merit Systems Protection Board shall—(1). hear, adjudicate, or provide for the hearing or adjudication, of all matters within the jurisdiction of the Board under this title, chapter 43 of title 38, or any other law, rule, or regulation, and, subject to otherwise applicable provisions of law, take final action on any such matter;....(f)(4). The Board shall require any agency—(A). to cease compliance with any provisions of any rule or regulation which the Board declares under this subsection to be invalid on its face; and (B). to correct any invalid implementation by the agency of any provisions of any rule or regulation which the Board declares under this subsection to have been invalidly implemented by the agency.

48. 5 U.S.C. §1104(a)(2); DELEGATION OF AUTHORITY FOR PERSONNEL MANAGEMENT. (a). Subject to subsection (b)(3) of this section—...(2). the Director may delegate, in whole or in part, any function vested in or delegated to the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service.

49. OTHER CITED STATUTE AND RULE continued in the APPENDIC C; they are: (1). 28 U.S.C.§453; OATHS OF JUSTICES AND JUDGES. (2). FRE 401; DEFINITIONS OF "RELEVANT EVIDENCE". (3). FRE 1001(4); DEFINITIONS. (4). FRE 1003; ADMISSIBILITY OF DUPLICATES. (5). FRE 103(a); RULINGS ON EVIDENCE. (6). LOCAL FRAP 11(e)(1); RETAINING THE RECORD BY COURT ORDER. (7). FRCP 17(a); PARTIES PLAINTIFF AND DEFENDENT; CAPACITY. (8). FRCrP 32(d);

SENTENCE AND JUDGMENT. (9). FRCrP 52(a); HARMLESS ERROR. (10). DOD 1400.25-M(DEC 96)(A),(C), (E)(2). (11). DOD 1400.25-M(Dec96); SUBCHAPTER 430, APPENDIX A, DOD PERFORMANCE APPRAISAL SYSTEM (C)(6),(10), (13),(D)(5),(7),(14).

IV. STATEMENT OF THE CASE

The Petitioner[employee, Appellant] as an employee at the Oklahoma City Logistic Center was employed in the Pollution Prevention Division as an Environmental Engineer from Feb.89 thru Jan.99. Oklahoma City Logistic Center is an integral part of the Air Force Material Command which is an integral part of the Department of the Air Force, which is known as a Military Department and an integral part of the Department of the Department of Defense, which is known as the Executive Agency or Department.

During the employee's employment annual Appraisal Ratings of Record on Job Performance were conducted and finalized. But, Job Performance deterioration averred began in Appraisal Periods from Apr..01.97 thru Aug.18.98. In Appraisal Period Apr.01.97 thru Mar.31.98, an Rating of Record was finalized averring "Minimally Acceptable" for the employee failure to met a non-critical element and standard. Which stated in performance plan, respectively, as : Provides Professional working relationship and communicates clearly with other Offices; No more than one compliant per period. Thereafter, an OUT-OF-CYCLE performance rating for the appraisal period Mar.31.98 thru Aug.18.98 was issued on Aug.20.98 yielding an "UNACCEPTABLE" rating for failure to met two critical elements and standards. Which is stated in the performance plan as: (1). E. Consults on current maintenance processes to identify ways to reduce the use of Hazardous Materials and reduce the generation of Hazardous Waste. Prepares summary charts of yearly generations. S. Opportunity Assessments of Hazardous Material/Hazardous Waste reductions are written with no more than 2-4 errors. Content of Reports are broad and address the amount of Hazardous Material/Hazardous Waste usage and viable alternatives for reduction. Summary data has no more than 2-4 errors. (2). E.Reviews chemical and physical processes and identifies projects to eliminate/reduce use of Hazardous Material. Prepares detailed project documentation, programming

documentation, Draft AF1391s and cost estimates for Statement of Works(SOWs).
S. No more than 2-3 late suspenses during the reporting period. Wherein, together those elements and standards were utilized in six instances of work assignments for the job performance rating. Along with the job performance rating, on Aug.20.98 a NOTICE OF OPPORTUNITY TO IMPROVE PERFORMANCE TO AN ACCEPTABLE LEVEL was issued averring a minimum period of 60 days to improve performance to an acceptable level; and during, the next 90 days supervision will assist in efforts to reach a FULLY SUCCESSFUL level of performance and provide feedback and other support as required. And, a reminder that the responsibility for meeting all the performance standards, you bear . Thereafter, on Nov.10.98, the employee received a NOTICE OF DECISION TO WITHHOLD WITHIN-GRADE INCREASE due Dec.20.98 ; which averred Aug.20.98 OUT-OF-CYCLE performance rating of UNACCEPTABLE; withholding within-grade increase due Dec.20.98; performance elements and standards deficient; a copy of the OUT-OF -CYCLE performance rating; and request for reconsideration within 15 days from the date of the Notice, but failure to state[give] notice of a right to Appeal before[with] the MERIT SYSTEMS PROTECTION BOARD. And, nor did the employee request for an extension on the request for reconsideration time frame as prescribe in 5 CFR §531.410(d). The act to WITHHOLD WITHIN-WITHIN GRADE INCREASE on an OUT-OF-CYCLE job performance rating was improper for several statutory and regulatory reasons, which are: (1). AFI 36-1001(10.5) and (10.4. 6). (2). DOD 1400.25-M(b)(9). (3). 5 CFR §430.206(a)(2). (4). 5 CFR §531.411. (5). 5 U.S.C. §5335(c). And, the NOTICE OF DECISION was improper as prescribe in (6). 5 CFR §1201.21 . Therefore, on Jan.19.99, the employee filed an Appeal with the MERIT SYSTEMS PROTECTION BOARD docketed under number DA-531D-99-0170-I-1. The proceeding before the MERIT SYSTEMS PROTECTION BOARD, DALLAS FIELD OFFICE proceeded with the Board and the parties submittals. Wherein, (1). The agency Motion to Dismiss for Lack of Jurisdiction, dated Jan.28.99 averring the employee the NOTICE for request for reconsideration stated in the Nov.10.98 Notice of Decision; the jurisdiction of the Board in 5 U.S.C. §5335(c) unless reconsideration has been requested and other appeal allegation(refer to the M.S.P.B. RECORD). (2). The Agency

Motion to Consolidate, dated Feb.19.99, the WITHIN-GRADE INCREASE, DA-531D-99-0170-I-1 and REMOVAL, DA-0432-99-0203-I-1 . (3). The Appellant Motion to Consolidate, dated Feb.22.99(refer to the M.S.P.B. Record). (4). The parties Settlement Agreement Discussion, dated Feb.23.99. (5). The Agency Motion to Dismiss for Lack of Jurisdiction, dated Feb.25.99. (6). The Agency Addendum Motion to Dismiss, dated Mar.04.99. (7). The Board Memorandum of Telephonic Conference on Mar.02.99, dated Mar.04.99, for settlement, hearing consolidation, issues in the case, burden of proof, stipulations , motions and hearing exhibits. (9). The Board Show Cause Order Jurisdiction, dated Mar.04.99. (10). The Board Order Of Joinder For Hearing and Cancellation of Mar.17.99 Hearing date, dated Mar.04.99. (11). The Appellant Motion for Certification of Interlocutory Appeal, dated Mar.14.99. (12). The Appellant Response in Show Cause Order Jurisdiction, dated Mar.19.99. (13). The Board Order, dated Apr.02.99 on appeals no longer being joined. (14). The Board Order, dated Apr.02.99 on denial of the interlocutory appeal and Hearing for Apr.14.99 cancelled. (15). The Board INITIAL DECISION, dated Apr.05.99, dismissing the appeal based on the Board Analysis and findings.(refer tothe Appendic A, page 9). (16). The Appellant PETITION FOR REVIEW, dated May.11.99 on the Board Initial Decision of Dismissal and Motion for a Claim(refer to the M.S.P.B RECORD). (17). The Agency Response to Appellant's Petition For Review, dated May.19.99, averring Dismiss for Lack of Jurisdiction; jurisdiction of the Board in 5 U.S.C. §5335(c); factssurrounding the Within Grade Increase; and notification under 5 CFR §1201.21 (18). The Board Final Order, dated Jul.22.99, averring denial of the Petition for Review and the Initial Decision is final(refer to the appendic A, page 6) occurred(refer to Appendic C). The Initial Decision declaring the Board is not plenary; it is limited to those matters over which it has been given jurisdiction by statute or regulation; the Board jurisdiction over denial of a WIGI, the appellant must sought reconsideration from the agency and the agency must have denied the increase on reconsideration;.the record shows that, although the appellant was informed of her right to request for reconsideration, she did not file a reconsideration request. These findings are in non-compliance with 5 U.S.C. §7701(b)(1) which purports §7701(a); notwithstanding 5 CFR §1201.3(a) terminology " These include" do not yield exclusive

terminology. And, further 5 CFR §1201.21, the employee received a notice of decision; wherefore, notice of right to appeal must be included in the notice of decision Wherein, denied. In pursuit of Judicial Review, the Petitioner filed a Petition for Review of the Merit Systems Protection Board FINAL DECISION[ORDER] with the U.S. Court of Appeals for the Federal Circuit on Sep.11.99. Wherefore, the proceeding in the Federal Circuit Court of Appeals proceeded with:(1). Merit System Protection Board Index, dated Oct.07.99. (2). The Petitioner Certificate of Interest, dated Nov.08.99. (3). The Petitioner FORMAL BRIEF AND APPENDIX, dated Nov.28.99. (4). Federal Circuit ORDER on the Formal Brief and Appendix, dated Dec.03.99. (5). The Defendent[Respondent] Motion to Recaption, dated Dec.02.99. (6). The Petitioner Corrected Formal Brief and Appendix, dated Dec.13.99. (6). The Federal Circuit Order on Motion for Respondent's Motion to Recaption, dated Jan.12.00, wherein, non-compliance yields with 5 U.S.C. §7703 and FEDERAL RULES CIVIL PROCEDURE and FRCP 17(a)(refer to Appendic C). (7). The Merit Systems Protection Board Formal Brief and Appendix, dated Feb.22.2000. (8). Federal Circuit Oral Argument ORDER, dated May.22.00. (9). Petitioner Response to Oral Argument Order, dated Jun.13.2000. (10). Federal Circuit Order, dated Jun.16.00 for consideration that oral argument is unnecessary. (11). Federal Circuit NOTICE OF ENTRY OF JUDGMENT, dated Jul.12.00, which affirmed the concerns of the Appeal and Board Decision for LACK OF JURISDICTION. But, yet no prosecution in the Judgment only general findings; and costs assessed against the Petitioner for mandate(see Appendic A). (12). Petitioner Rehearing Brief and Appendix filed Jul.24.00 (13). Petitioner Motion for Submittal of a Bill of Costs..., dated Aug.01.00(see the Fed. Cir Record). (14). Federal Circuit Order, dated Aug.14.00 for denial of the Bill Of Costs. (15). Federal Circuit Order, dated Aug.04.00 for DENIAL OF THE PETITION FOR PANEL REHEARING. The U.S. Court Of Appeals For The Federal Circuit Entry of Judgment exemplified improper application of the Merit Systems Protection in Appellate Jurisdiction as well as in regulation for a Notice of Right to Appeal in a Notice of Decision, where a matter is appealable to the Board. End.

V. ARGUMENTATION IN ALLOWANCE OF THE WRIT CERTIORARI.

WHY MUST THIS WRIT OF CERTIORARI BE GRANTED. Why not ? Is not the Constitution of

the United States under Ammendment III, section 2, para. 2, which declares the Supreme Court to have appellate jurisdiction in controversies to which the United States is a party. And therefore, in 28 U.S.C. § 1251 prescribing no exclusion on controversies to which the United States is a party. Notwithstanding, the Petitioner has been adversely affected through lack of Constitutional Provisions not being activated in this case, where in DUE PROCESS OF THE LAW and PROSECUTION is not exemplified in Judgments from the lower courts. And, APPLICATION OF RULE, STATUTE, AND REGULATIONS and AGENCY DIRECTIVES are improperly applied. Not excluding, 28 U.S.C. §1254 prescribes the method of appealing to the Supreme Court from the Court of Appeals after rendition of Judgment. And, 28 U.S.C. § 2101 prescribe for the timely filed Writ of Certiorari.

No._____

In The SUPREME COURT Of The UNITED STATES

Patricia Bonton,
Petitioner

v.

(1). United States Merit Systems Protection Board,
(2). Oklahoma City Air Logistic Center Environmental Management Directorate Pollution Prevention Division,

Defendent(s)

On Petition For Writ Of Certiorari to the United States Court Of Appeals For The Federal Circuit, Final Judgment; U.S. Merit Systems Protection Board, Final Decision; U.S. Merit Systems Protection Board, Dallas Field Office, Initial Decision.

PETITION FOR WRIT OF CERTIORARI

APPENDICS

PATRICIA BONTON, pro se
P.O. Box 12372
Alexandria, Louisiana 71315-2372
Phone: not available

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

NOTICE OF ENTRY OF
JUDGMENT ACCOMPANIED BY OPINION

OPINION FILED AND JUDGMENT ENTERED: 07/12/00

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing in banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

Costs are taxed against the Petitioner(s) in favor of the Respondent(s) under Rule 39. The party entitled to costs is provided a bill of costs form and an instruction sheet with this notice.

The parties are encouraged to stipulate to the costs. A bill of costs will be presumed correct in the absence of a timely filed objection.

Costs are payable to the party awarded costs. If costs are awarded to the government, they should be paid to the Treasurer of the United States. Where costs are awarded against the government, payment should be made to the person(s) designated under the governing statutes, the court's orders, and the parties' written settlement agreements. In cases between private parties, payment should be made to counsel for the party awarded costs or, if the party is not represented by counsel, to the party pro se. Payment of costs should not be sent to the court. Costs should be paid promptly.

If the court also imposed monetary sanctions, they are payable to the opposing party unless the court's opinion provides otherwise. Sanctions should be paid in the same way as costs.

Exhibits and visual aids shall be retrieved by the party that lodged them with this court once the mandate has issued

JAN HORBALY
Clerk

cc: PATRICIA BONTON
SARA B. REARDEN
BONTON V MSPB, 99-3444
MSPB - DA531D990170-I-1

NOTE: Pursuant to Fed. Cir. R. 47.6, this disposition is not citable as precedent, it is a public record. This disposition will appear in tables published periodically.
United States Court of Appeals for the Federal Circuit

99-3444
PATRICIA BONTON,
Petitioner,
v.
MERIT SYSTEM PROTECTION BOARD,
Respondent.

DECIDED: JULY 12,2000

Before MAYER, Chief Judge, PLAGER AND LINN, Circuit Judges.
PER CURIAM.

Patricia Bonton seeks review of the final decision of the Merit Systems Protection Board("BOARD"), No. DA-531D-99-0270-I-1, which affirmed the dismissal of her appeal on the basis of a lack of jurisdiction. Ms. Bonton's appeal concerns an allegedly improper issuance of a denial of a within-grade increase("WIGI"), a performance rating of "Unacceptable," and placement on a performance improvement plan("PIP"). We affirm.

DISCUSSION

The scope of our review of a decision of the Board is limited. We must affirm the decision of the Board unless we find it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; obtained without procedures required by law, rule,or regulation have been followed; or unsupported by substantial evidence. See 5 U.S.C. § 7703. The Board's jurisdiction is a question of law tht we review independently. See Van Wersch v. Dept. of Health & Human Servs., 197 F.3d 1144 (Fed.Cir. 1999).

The jurisdiction of the Board is not plenary. Rather, it is limited to those matters specifically entrusted to it by statute, rule, or regulation. See Todd v. Merit Sys. Protection Bd., 55 F. 3d 1547, 1576 (Fed.Cir. 1995). An appellant has the burden of establishing the Board's jurisdiction by a preponderance of the evidence. See Forest v. Merit Sys. Protection Bd., 47 F.3d 409, 410 (Fed.Cir. 1995).

An employee's right to appeal an agency's initial denial of an employee's WIGI does not vest until the agency affirms the denial after reconsideration, unless the agency fails or refuses to act upon an employee's request for reconsideration. See 5 U.S.C. § 5335(c) ("If the determination is affirmed on reconsideration, the employee is entitle to appeal to the Merit Systems Protection Board."); 5 C.F.R. § 531.410(d) ("When a negative determination is sustained after reconsideration, an employee shall be informed in writing of the reasons for the decision and of his or her right to appeal the decision to the Merit System Protection Board."). The Board found that Ms. Bonton failed to file a request for reconsideration even though she was informed of her right to do so. This finding is supported by the record. See Affidavit of Geri L. Hart ("At no time after Ms Bonton's receipt of that letter [which refers to the right to request reconsideration] was a Request for Reconsideration received from Ms. Bonton."). Thus, the Board correctly found it does not have jurisdiction over Ms. Bonton appeal of the denial of the WIGI.

Ms. Bonton argues that the notice she received regarding her appeal rights was insufficient, citing 5 C.F.R. § 1201.21. However, § 1201.21 only requires notice of appeal rights when the matter is appealable tothe Board. As discussed above, an initial decision denying a WIGI is subject only to reconsideration by the agency; it cannot by itself be appealed directly to the Board. The relevant regulation, 5 C.F.R. § 531.409(e)(2)(ii), requires that the employee be notified of this right of reconsideration, and it is uncontested that Ms. Bonton was so notified. Reconsideration was Ms. Bonton's only legal option for review at that time. It is only *after such* reconsideration that the employee gains the right to appeal to the Board, and the relevant regulation requires that the employee be informed of this right. See 5 C.F.R. § 531.410(d). Since Ms. Bonton never requested reconsideration, she never reached this stage, and therefore she never gained the right to appeal to the Board or the accompanying entitlement to notice of such a right (and indeed any such notice would have been improper).

Ms. Bonton cites several regulations and statutes which she argues confer jurisdiction to the Board over her appeal of the denial of the WIGI. We have considered the regulations and statutes cited and find those regulations and statutes do not confer jurisdiction to

the Board of her appeal.

The Board does not have jurisdiction over an appeal from the issuance of a performance rating or over the placement of an employee on a PIP. See 5 C.F.R. § 1201.3; see also Manley v. Dept. of the Air Force, 91 F.3d 117, 119 (Fed.Cir. 1996) ("The Board correctly held that disagreement with a performance evaluation, unaccompanied by an otherwise appealable adverse action, is not independently appealable to the Board."); Shaishaa v. Dept of the Army, 58 M.S.P.R. 450, 454 (1992) ("We find...that the administrative judge correctly held that the appellant's placement on a PIP was not a matter that is appealable to the Board."). The Board found that Ms. Bonton failed to establish any basis for Board jurisdiction over her appeal of her performance rating and placement on a PIP. This finding is supported by the record, and thus the Board correctly found Ms. Bonton failed to establish jurisdiction of her appeal of her performance rating and placement on a PIP.

We have considered Ms. Bonton's other arguments and conclude that those arguments either challenge merits of the agency's action or lack merit. In view of the foregoing, we affirm the Board's decision.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

99-3444

Patricia Bonton,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

JUDGMENT

ON APPEAL from the MERIT SYSTEM PROTECTION BOARD
in CASE NO(S). DA531D990270-I-1
This CAUSE having been heard and considered, it is
ORDERED AND ADJUDGED: AFFIRMED

ENTERED BY ORDER OF THE COURT

DATED: July 12, 2000

s/ JAN HORBALY
JAN HORBALY,
CLERK

ISSUED AS A MANDATE:
September 5, 2000

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

PATRICIA BONTON,
Appellant,

v.

DEPARTMENT OF THE AIR FORCE,
Agency.

DOCKET NUMBER
DA-531D-99-0170-I-1

:DATE

Patricia A.Bonton, Alexandria, Louisiana, pro se.
Major Telin W. Ozier, Esquire, Tinker Air Force Base, Oklahoma, for the agency.

BEFORE
Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Susanne T. Marshall, Member

FINAL ORDER

The appellant has filed a petition for review in this case asking us to reconsider the initial decision issued by the administrative judge. We grant petitions such as this one only when significant new evidence is presented to us that was not available for consideration earlier or when the administrative judge made an error interpreting a law or regulation. The regulation that establishes this standard of review is found in Title 5 of the Code of Federal Regulations, section 1201.115(5C.F.R. § 1201.115).

After fully considering the filings in this appeal, we conclude that there is no new, previously unavailable, evidence and that the administrative judge made no error in law or regulation that affects the outcome. 5 C.F.R § 1201.115(d). Therefore, we DENY the petition for review. The initial decision of the administrative judge is final. This is the Board's final decision in this matter. 5 C.F.R. § 1201.113.

NOTICE TO THE APPELLANT REGARDING
YOUR FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review this final decision.

You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 60 calendar days after your receipt of this order. If you have a representative in this case, and your representative receives this order before you do, then you must file with the court no later than 60 calendar days after receipt by your representative. If you choose to file, by very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management,* 931 F.2d 1544 (Fed.Cir. 1991).

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 (5 U.S.C. § 7703). You may read this law as well as review other related material at our web site, http://www.mspb.gov.

FOR THE BOARD: s/
WASHINGTON, DC

Robert E. Taylor
Clerk of the Board

CERTIFICATE OF SERVICE

I certifiy that this ORDER was sent today:

By certified mail to:

Patricia Bonton
P.O. Box 12372
Alexandria, LA 71315

By regular mail to:

Major Telin W. Ozier, Esq.
Department of the Air Force
OC-ALC/JAL
7460 Arnold Avenue, SE Wing
Tinker AFB, OK 73145-9002
Marjorie Marks
U.S. Office of Personnel Management
Employee Relations Division
1900 "E" Street, N.W., Room 7412
Washington, DC 20415
Merit Systems Protection Board
Dallas Field Office
1100 Commerce Street, Room 6F20
Dallas, TX 75242

By hand to :

Office of the Special Counsel
1730 M Street, N.W.
Suite 300
Washington, DC 20036-4505

July 22, 1999 — Jacquelin Wilson

(Date) s/ Jacquelin Wilson
Washington, DC Legal Assistant

UNITED STATES OF AMERICA
MERIT SYSTEM PROTECTION BOARD
DALLAS FIELD OFFICE

PATRICIA A. BONTON, Appellant, v. DEPARTMENT OF THE AIR FORCE, Agency,	)	DOCKET NUMBER DA-531D-99-0170-I-1 DATE: APR- 5 1999

PATRICIA A. BONTON, Oklahoma City, Oklahoma, pro se.
Major Telin W. Ozier, Esquire, Tinker Air Force Base, Oklahoma, for the Agency.

BEFORE
Daniel Madden Turbitt
Administrative Judge

INITIAL DECISION

On January 19, 1999, Patricia A. Bonton filed an appeal alleging that the agency improperly issued her a performance rating of "Unacceptable;" placed her on a performance improvement plan(PIP); and denied her a within-grade increase(WIGI).

Based on the following analysis and findings, the appeal is DISMISSED.[1]

ANALYSIS AND FINDINGS

The appellant occupied a GS-0819-11, step 6, position of Environmental Engineer, at Tinker Air Force Base, Oklahoma. On August 20, 1998, she received a performance rating of "Unacceptable" for the period from

[1] Because of my findings on the jurisdictional issue, I need not reach the issue of whether the appeal was timely filed. *See Popham v. United states Postal Service*, 50 M.S.P.B.R. 193, 197-98(1991).

March 31,1998 through August 18,1998. Appeal File(AF), Tab 9, Subtab 4c. By memorandum dated November 10, 1998, Geri L. Hart, Chief, Pollution Prevention Division, Environmental Management Directorate, denied the appellant's WIGI to step 7. *See id.*, Subtab 4b. The appellant was advised tht she could request reconsideration of the WIGI denial, either orally or in writing, within 15 calendar days after receipt of the memorandum. She was infromed that her request "must state the specific reasons you believe the decision to withhold your WGI should be reconsidered." *Id.* The appellant did not file a request for reconsideration.

On January 19, 1999, the appellant filed the instant appeal.

The appellant bears the burden of proof on the issue of jurisdiction.

The appellant has the burden of proving by a preponderance of the evidence that the Board has jurisdiction over her appeal. *See* 5 C.F.R. § 1201.56(a)(2)(i) (1998); *Stern v. Departmentof the Army*, 699 F.2d 1312 (Fed.Cir.), *cert. denied*, 462U.S. 1122 (1983). A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C.F.R. § 1201.56(c)(2) (1998).

The Board lacks jurisdiction over the appellant's appeal.

On January 28, 1999, the agency moved that the appeal be dismissed, asserting that the appellant had not requested reconsideration of the denial of her WIGI. In support of its motion, the agency submitted an affidavit from the appellant's former supervisor, Geri L. Hart, who averred that:

On 10November 1998, I provided a letter to Ms. Patricia Bonton, the Appellant in this case. The letter, the subject matter of which was "Notice of Decision to Withhold Within-Grade Increase" was signed by me... Paragraph 4 of that letter stated in specific: " *You have the right to a designated representative to assist you with your request for reconsideration in accordance with the Administrative Grievance System. If you elect to have a representative, your request for reconsideration must so state and contain the name of that individual."* At no time after Ms. Bonton's receipt of that letter was a Request for Reconsideration received from Ms. Bonton. In

fact, after a period of time following Ms. Bonton's receipt of the letter, I specifically asked her whether she had submitted a Request for Reconsideration and she stated she had not. AF, Tab 5 (Emphasis in original). In its response to the appeal , the agency renewed its motion to dismiss, for the reasons stated in its earlier motion. AF, Tab 9, Subtab I.

On February 24, 1999, the appellant submitted a pleading titled, "Response in Ordered Submissions." In that pleading, she provided a Statement of Facts, wherein she conceded that "the Appellant did not request for RECONSIDERATION of the DECISION to WITHHOLD WITHIN-GRADE INCREASE (WGI)." AF, Tab 22.

On February 25, 1999, and March 4, 1999, the agency filed addendum motions to dismiss the appeal as outside the Board's Jurisdiction. In those motions, the agency asserted that, in the appellant's February 24, 1999 submission, she explicitly acknowledged that she did not request reconsideration of the denial of the WIGI. In addition, the agency noted that, during a prehearing conference held in this matter, the appellant orally admitted that she "did not go through the reconsideration of the denial of the WGI." The agency further stated that the appellant's other arguments, namely, that it purportedly committed harmful error in taking the action, could not be addressed because the appeal was outside the Board's purview. AF, Tabs 24,28.

By Show Cause Order dated March 4, 1999, the appellant was advised that the Board might not have jurisdiction over her appeal because it did not appear that she had requested reconsideration of the denial of her WIGI, and she was provided an opportunity to submit argument and evidence to establish the Board's jurisdiction. She was also advised that she has the burden to prove that the Board has jurisdiction over her appeal. *See* 5 C.F.R. § 1201.56(a)(2) (1998); AF, Tab 29.

The apppellant responded to the Show Cause Order by arguing that, under 5 U.S.C. § 7701(a), the Board has jurisdiction over " any action which is appealable to the Board under any law, rule, or regulation." She alleged that the Board has jurisdiction here because the agency, when it denied her WIGI, violated its regulation, AFI 36-1001, which states that the agency should haved explained to her the reasons for the denial, and advised her of her appeal rights to the Board. Based on the agency's alleged violation of this

regulation, the appellant contended that the Board has jurisdiction over this matter. AF, Tab 34.

The Board jurisdiction is not plenary; it is limited to those matters over which it has been given jurisdiction by statute or regulation. *Shaw v. Department of the Navy*, 39 M.S.P.R. 586, 588 (1989), *overruled in part on other grounds, Joyce v. Department of the Air Force*, 74 M.S.P.R. 112 (1997). The Board has not been given jurisdiction over an appeal from the issuance of a performance rating or over the placement of an employee on a PIP.[2] *See* 5 C.F.R. § 1201.3 (1998); *see also Manley v. Department of the Air Force*, 91 F. 3d 117, 119 (Fed. Cir. 1996) (disagreement with performance evaluation is not independently apealable to the Board).

In order for the Board to have jurisdiction over the denial of a WIGI, the appellant must first have sought reconsideration from the agency, and the agency must have denied the increase on reconsideration. 5 U.S.C. § 5335(c); 5 C.F.R § 531.410; *see also Shaishaa v. Department of the Army*, 58 M.S.P.R. 450, 453 (1992). The only exception, not applicable here, that would provide the Board jurisdiction in a case where the employing agency has not affirmed its denial, occurs when the agency has been unreasonable in failing or refusing to act on the employee's request for reconsideration. In this case, the record shows that, although the apellant was informed of her right to request for reconsideration, she did not file a reconsideration request. Because the appellant did not request agency reconsideration, her appeal from the denial of her WIGI is not within the Board's jurisdiction. For this reason, and because she has established no basis for Board jurisdiction over her performance rating and her placement on a PIP, she has not met her burden of establishing Board jurisdiction in this case. *See Priselac v. Department of the Navy*, 77 M.S.P.R. 332, 335 (1998).

Allegations of prohibited personnel practices and discrimination do not give the Board jurisdiction over this appeal.

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[2] In any event, most of these issues are being litigated in another appeal currently pending before the Board, in which the appellant is challenging the agency's action to remove her for unacceptable performance. *See Bonton v. Department of the Air Force*, MSPB Docket No. DA- 0432-99-0170-I-1.

The appellant's contention that she was the victim of discrimination, to that extent that it might be considered to have been raised, is insufficient to confer jurisdiction on the Board. *See Kramer v. United States Postal Service,* 53 M.S.P.R. 318,319 (1992). Furthermore, the appellant's contentions that the agency violated merit system principles and committed prohibited personnel practices do not independently provide a basis for the exercise of Board jurisdiction. *See D'Leo v. Department of the Navy,* 53 M.S.P.R. 44, 48 (1992) (merit system principles are not self-excuting and do not provide the Board an independent source of jurisdiction); *see also Fogerty v. Department of the Treasury,* 53 M.S.P.R. 168, 170 (1992) (the prohibited personnel practices statute, 5 U.S.C.§ 2302(b), is not an independent source of Board jurisdiction) (citing *Wren v. Department of the Army,* 2 M.S.P.R. 1,2 (1980), *aff'd sub nom. Wren v. Merit System Protection Board,* 681 F.2d 867, 871-73 (D.C. Cir. 1982)).

Moreover, the appellant has asserted that the agency committed harmful procedural error in this action. Her arguments, though, are essentially a generalized challenge to the merits of the agency's action. As such, her charges are insufficient to confer jurisdiction on the Board. The Board has no jurisdiction over the merits of the appellant's case unless it first has personal jurisdiction over her and any agency action that was taken against her. *See Godfrey v. Veterans Administration,* 40 M.S.P.R. 438, 442 (1989) (where the Board lacked jurisdiction, it could not address the appellant's allegations regarding the merits of her appeal).

BEST AVAILA

Finally, the appellant's request for a hearing was denied because she did not raise non-frivolous issues of fact relating to jurisdiction.[3] *See Manning v. Merit System Protection Board,* 742 F.2d 1424, 1427-28 (Fed. Cir. 1984)

DECISION

FOR THE BOARD: s/ _____
DANIEL MADDEN TURBITT

NOTICE TO APPELLANT

The initial decision will become final on MAY 11,1999, unless a petition for review is filed by that date or the Board reopens the case on its own motion. This is an important date because it is usually the last day on which you can file a petition for review with the Board. However, if this initial decision is received by you more than 5 days after the date of issuance, you may file a petition for review with the Court of Appeals for the Federal Circuit. The paragraphs that follow tell you how and when to file with the Board or the federal court. These instructions are important because if you wish to file a petition, you must file it within the proper time period.

BOARD REVIEW

You may request Board review of this initial decision by filing a petition for review. Your petition, with supporting evidence and argument, must be filed with:

The Clerk of the Board
Merit Systems Protection Board
1120 Vermont Avenue, N.W., Room 806
Washington, DC 20419

If you file a petition for review, the Board will obtain the record in your case from the administrative judge and you should not submit anything to the Board that is already part of the record. Your petition must be postmarked , faxed, or hand-delivered no later than the date this initial decision becomes final, or if this initial decision is received.

[3] Therefore, the hearing scheduled for Wednesday, April 14, 1999 is canceled.

LE COPY

by you more than 5 days after the date of issuance, 30 days after the date you actually receive the initial decision. If you fail to provide a statement with your ppetition that you either mailed, faxed, or hand-delivered a copy of your petition to the agency, your petition will be rejected and returned to you.

JUDICIAL REVIEW

If you are dissatisfied with the Board's final decision, you may file a petition with:

The United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

You may not file your petition with the court before this decision becomes final. To be timely, your petition must be received by the court no later than 60 calendar days after the date this initial decision becomes final.

NOTICE TO AGENCY/INTERVENOR

The agency or intervenor may file a petition for review of this initial decision in accordance with the Board's regulations.

CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent by regular mail, unless otherwise indicated below, this day to each of the following:

APPELLANT
Patricia Bonton
P.O. Box 20304
Oklahoma City, OK 73156

Agency's Representative(s)
Major Telin W. Ozier, Esq.
Major Carlos McDade
Mr. Tim Forrest
Department of the Air Force
OC-ALC/JAL - 7460 Arnold Avenue, SE Wing
Tinker AFB, OK 73145-9002

Other
M arjorie Marks
U.S. Office of Personnel Management
Employee Relations Division
1900 "E" Street, N.W., Room 7412
Washington, DC 20415

April 5, 1999 (Date)

s/ Bobbie J. Williams
Bobbie J. Williams
Paralegal Specialist

NOTE: Pursuant to Fed.Cir.R.47.6, this order is not citable as precendent, it is a public order.

United States Court of Appeals for the Federal Circuit

99-3444

PATRICIA BONTON,
Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

ON MOTION

Before RADER, Circuit Judge

ORDER

The Department of the Air Force moves to reform the caption to designate the Merit System Protection Board as respondent. The Air Force states that the Board consents. Patricia Bonton has not responded.

Bonton appealed the Air Force's denial of her within-grade increase(WIGI). The administrative judge dismissed Bonton's appeal for lack of jurisdiction because Bonton failed to request the Air Force to reconsider the denial of her WIGI. See 5 U.S.C. § 5335(c). (employee must first seek reconsideration from the agency before appealing to the Board).

Pursuant to 5 U.S.C.§ 7703(a)(2), the Board is designated as the respondent when its decision concerns solely the procedure or jurisdict of the Board. Spruill v. Merit Sys. Protection Bd., 978 F.2d 679, 686 (Fed.Cir. 1992). The employing agency is designated as the respondent when the Board reaches the merits of the underlying personnel action. See id.

The Board's decision dismissing Bonton's petition for failure to seek reconsideration of her WIGI denial is not a decision "on the merits on the underlying personnel action." See 5 U.S.C. § 7703(a)(2). Therefore, the Board is the proper respondent.

According,

IT IS ORDERED THAT:

(1) The Air Force's Motion to reform the caption is

granted.

(2) The revised official caption is reflected above.

(3) The Air Force is directed to promptly transmit to the Board a copy of all documents that the Air Force filed with the Court, and all documents that the petitioner served on the Air Force.

1/12/00
DATE

s/ Randall R. Radar
Randall R. Radar
Circuit Judge

cc: Patricia Bonton
Lee J. Freedman, Esq
Sara Rearden, Esq.
s13

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
JAN 13 2000
JAN HORBALY
CLERK

NOTE: Pursuant to Fed.Cir.R.47.6, this order is not citable as precendent. It is a public order.

United States Court of Appeals for the Federal Circuit

99-3444

PATRICIA BONTON,

Petitioner,

v.

MERIT SYSTEMS PROTECTION BOARD,

Respondent.

ORDER

The panel of judges that will decide the appeal, upon further consideration, has determined that oral argument is unnecessary. See Fed.R.App.P.34(a)(2)(C).

THEREFORE, IT IS ORDERED THAT:

(1). The appeal will be submitted on the briefs without oral argument on July 7, 2000.

FOR THE COURT

DATED: June 16, 2000 s/ [illegible]

JAN HORBALY, CLERK

cc: Patricia Bonton
Sara B. Rearden

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUN 16 2000

JAN HORBALY
CLERK

United States Court of Appeals for the Federal Circuit
ORAL ARGUMENT ORDER
99-3444
BONTON V MSPB

This appeal is scheduled for oral argument in the U.S.Court of Appeals for the Federal Circuit, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C.:

Date: Friday, July 7, 2000
Time: 10:00 A.M.
Courtroom No. 2
Argument Time: 15 MIN PER SIDE
Counsel for the appellant/petitioner/ intervenor(s): PATRICIA BONTON
Counsel for the appellee/respondent/cross-appellant/intervenor(s): SARA B. REARDEN

The appeal having been placed on the oral argument calendar, counsel need not submit the statement allowed by Fed.R.App.P 34(a), setting forth the reasons why oral argument should be heard. Notwithstanding the scheduling for oral argument, the panel of judges that will decide the appeal, upon further consideration, may yet disallow oral argument, under the circumstances set forth in Fed.R.App.P. 34(a), and, if so, counsel will be duly notified by the clerk.

An Information Sheet, Notices to Counsel on Oral Argument and Courtroom Decorum, a Calendar Announcement, and a pink Response to Oral Argument Order are attached.

Return the pink sheet no later than June 9, 2000. Facsimile transmission is permitted, but see Fed.Cir.R. 25 practice note.

FOR THE COURT

JAN HORBALY
CLERK

May 22, 2000

cc: PATRICIA BONTON
SARA B. REARDEN

OTHER STATUTES AND RULES

As referenced in item number 48, the OTHER CITED STATUTES AND RULES are:

(1). 28 U.S.C. §453; OATHS OF JUSTICES AND JUDGES. E ach justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: " I, ___ ____ , do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

(2). FEDERAL RULE OF EVIDENCE(FRE) 401; DEFINITION OF " RELEVANT EVIDENCE". " Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

(3). FRE 1001(4); DEFINITIONS. (4). DUPLICATE.- A "duplicate"is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

(4). FRE 1003; ADMISSIBILITY OF DUPLICATES. A duplicate is admissible to the same extent as an original unless (1). a genuine question is raised as to the authenticity of the original or (2). in the circumstances it would be unfair to admit the duplicate in lieu of the original.

(5). FRE 103(a)(2); RULINGS ON EVIDENCE. (a). Effect of erroneous ruling. —Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and ...(2). Offer of Proof. —In case the ruling is one excluding evidence, the substance of evidence was made known to the court by offer or apparent from the context within questions were asked.

(6). LOCAL FRAP 11(e)(1); RETAINING THE RECORD BY COURT ORDER. (1). The court of apeals may, by order or local rule, provide that a certified copy of the docket entries be forward instead of the entire record. But a party may at any time during the appeal request that designated parts of the record be forward.

(7). FEDERAL RULE OF CIVIL PROCEDURE(FRCP) 17(a); PARTIES PLAINTIFF AND DEFENDENT; CAPACITY. (a). Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution , the real party interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.
(8). FEDERAL RULE OF CRIMINIAL PROCEDURE(FRCrP) 32(d)(1); SENTENCE AND JUDGMENT. (d). JUDGMENT. (1). *In General.* A judgment of conviction must set forth the plea, the verdict or findings, the adjudication, and the sentence. If the defendent is found not guilty or for any other reason is entitled to be discharged, judgment must be entered accordingly. The judgment must be signed by the judge and entered by the clerk.
(9). FEDERAL RULE OF CRIMINAL PROCEDURE (FRCrP) 52; HARMLESS ERROR AND PLAIN ERROR. (a). HARMLESS ERROR. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. (b). PLAIN ERROR. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.
(10). DEPARTMENT OF DEFENSE(DOD) 1400.25-M(DEC 96); SUBCHAPTER 430, PERFORMANCE MANAGEMENT (A),(C),(E)(2). (A). PURPOSE. This Subchapter implements DOD performance management policies under references (a) through (c); prescribes procedures, delegates authority, and assigns responsibility for performance management within the Department of Defense; and establishes the DOD Performance Appraisal System ...(C). PERFORMANCE APPRAISAL. (1). Appendix A of this Subchapter establishes the DOD Performance Appraisal System It has been approved by the Office of Personnel Management(OPM)(See Appendix B). (2). The DoD Performance Appraisal System

governs all performance appraisal programs for covered employees within the Department of Defense. It establishes performance appraisal program requirements. Performance appraisal programs established or revised after the effective date of the DoD Performance Appraisal System shall comply with the System...(E). RESPONSIBILITIES. (2). The Heads of the DoD Components shall ensure the development, implementation, application and evaluation of performance management programs within their Components and shall ensure that programs established or revised after the effective date of the DoD Performance Appraisal System comply with the System and...
(11). DOD 1400.25-M(DEC96)(C)(6),(10),(13),(D)(5),(7),(9),(14). (C). DEFINITIONS. ...(6). Critical Element. A work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable....(10). Performance Rating. The written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical element and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level as specified in Section 430.208(d) of 5 CFR (reference (c)). ...(13). Rating of Record. The performance rating prepared at the end of an appraisal period for performance over the entire period and the assignment of a summary level as specified.... This constitutes the official rating of record referenced in Part 430 of reference(c). (D). PERFORMANCE APPRAISAL PROGRAM REQUIREMENTS. (5). Elements. Each performance appraisal program shall provide for a minimum of two rating levels for each critical and non-critical element. For critical elements, rating levels shall include rating levels at the "Fully Successful" or equivalent level and at the "Unacceptable" level. ...(7). Minimum Period of Performance. Performance appraisal programs shall contain at least a 60-day minimum period of performance that must be completed before a performance rating may be prepared. ...(9). Summary Level (a). Each performance appraisal program shall provide a method for deriving and assigning a summary level from one, and only one, of the following patterns based on appraisal of performance on critical elements and, where applicable, non-critical element: ...Under the above patterns, Level 1 through Level 5 are ordered categories, with Level 1 as the

lowest and Level 5 as the highest: Level 1 is "Unacceptable"; Level 3 is Fully Successful" or equivalent; and Level 5 is "Outstanding" or equivalent. The term "Outstanding" shall be used only to describe a Level 5 summary level. (b). A summary level must be assigned when a performance rating is prepared as part of a rating of record. Assigning a summary level at other times is optional. ...(14). Below " Fully Successful" Performance. (a). Programs may provide that managers and supervisors provide assistance to employees whose performance is determined to be below " Fully Successful" or equivalent but above " Unacceptable" at any time during the appraisal period. (b). Performance appraisal programs shall require that managers and supervisors provide assistance to employees to improve unacceptable performance. Assistance may be provided at any time during the appraisal period that performance is determined to be "Unacceptable" in one or more critical elements. Programs shall also provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after such employees have an opportunity to demonstrate acceptable performance. Programs shall also provide for review and approval of "Unacceptable" ratings of record by a higher level management official.

05 FEB 1999

MEMORANDUM FOR MERIT SYSTEMS PROTECTION BOARD
ATTENTION: Judge Daniel M. Turbitt
1100 Commerce Street, Room 6F20
Dallas, TX 75242

FROM: 72SPTG/DPCET
3001 Staff Dr., Ste 1AH187E
Tinker AFB OK 73145-3014

SUBJECT: Apeal - Patricia Bonton (DA-531D-99-0170-I-1)
Judge Turbitt
This letter transmits the Agency response to Ms. Bonton's appeal

/s/ Charles Stafford
CHARLES STAFFORD,
Chief, Staff & Associates
Employee Relations Branch
Directorate of Personnel

INDEX TO FILE
MSPB DOCKET DA-531D-99-0170-I-1
Patricia Bonton

Tab	Date	Document Description	Source
1	02-04-99	Narrative Response	Civilian Personnel-TAFB[1]
2	02-04-99	Bargaining Unit Coverage	Civilian Personnel-TAFB[1]
3	01-28-99	Formal Discrimination Complaint Status	Gloria A. Jenkins Chief, EEO, TAFB[1]
4a	12-20-98	SF-50, Notice of Personnel Action Denial of Within Grade Increase[1]	Civilian Personnel-TAFB[1]
4b	11-10-98	Notice of Decision to Withhold Within Grade Increase	Geri Hart Deciding Official
4c	08-20-98	Civilian Performance and Promotion Appraisal- Performance Rating	Geri L. Hart Rating Official
4d	04-29-98	Civilian Performance and Promotion Appraisal -Performance Plan	Geri L. Hart Rating Official
4e	06-01-96	Managing the Civilian Performance Program	HQ USAF[1]
4f	03-24-87	OPM[1] Approved of Air Force Performance Appraisal Systems	Office of Personnel Management

[1]TAFB - Tinker Air Force Base;OPM - Office of Personnel Management; EEO - Equal Employment Opportunity; HQ USAF - Headquarters, United States Air Force; SF-50 - Standard Form 50.

99-3444

UNITED STATES OF AMERICA

MERIT SYSTEM PROTECTION BOARD

ATTESTATION

I HEREBY ATTEST that the attached index represents a list of the documents comprising the administrative record of the Merit Systems Protection Board in the Appeal of Patricia Bonton v. Department of the Air Force. MSPB Docket No. DA-531D-99-0170-I-1, and that the administrative record is under my official custody and control on this date

on file in this Board

OCT 07 1999

Date

s/ Dorothy Plummer

Robert E. Taylor
Clerk of the Board

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1	Initial Appeal to MSPB	Jan.19, 1999
2	MSPB Acknowledgment Order	Jan.21, 1999
3	MSPB Notice: Hearing and Prehearing Conference	Jan.22, 1999
4	Agency Designation of Rep.& Hearing Location Response	Jan.27, 1999
5	Agency Motion to Dismiss	Jan.28, 1999
6	Appellant's Motion to Compel	Feb.03, 1999
7	MSPB Order Denying Agency's Location Request	Feb.05, 1999
8	Agency Request for Rescheduling	Feb.08, 1999
9	Agency File	Feb.09, 1999
10	Agency's Prehearing Submission	Feb.09, 1999
11	Appellant's Response in Rescheduling	Feb.18, 1999
12	Agency Designation of Hearing Location	Feb.19, 1999
13	Appellant's Motion to Compel Written Interrogatories	Feb.19, 1999
14	Agency Motion to Consolidate	Feb.19, 1999
15	Agency's Discovery Response	Feb.19, 1999
16	Agency's Response to Motion to Compel	Feb.22, 1999
17	Appellant's Motion for Subpoenas	Feb.23, 1999
18	Appellant's Response in Agency Discovery	Feb.23, 1999
19	Appellant's Agreed Upon Facts	Feb.23, 1999
20	Appellant's Response in Agency Agreed Facts	Feb.23, 1999
21	Appellant's Motion for Ex-Parte Communication	Feb.23, 1999
22	Appellant's Response inOrdered Submissions	Feb.24, 1999
23	Agency Response in Appellant's Agreed Facts	Feb.24, 1999
24	Agency's Motion to Dismiss for Jurisdiction	Feb.25, 1999

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25	Appellant's Notification of PHC Contact Point	Mar.01, 1999
26	Agency's Response to Appellant's Motion for Subpoenas & Request for Production of Documents - Request for Witnesses	Mar.01, 1999
27	Appellant's Response in Request for Contact Point	Mar.03, 1999
28	Agency Addendum/Motion to Dismiss	Mar.04, 1999
29	MSPB Show Cause Order	Mar.04, 1999
30	MSPB Memorandum of Telephone Conference	Mar.04, 1999
31	MSPB Order of Joinder for Hearing & Cancellation of Mar.17th Hearing Date	Mar.04, 1999
32	Motion for Certification of Interlocutory Appeal	Mar.14, 1999
33	MSPB Order of Prehearing Conference	Mar.17, 1999
34	Appellant's Response to Show Cause Order	Mar.19, 1999
35	MSPB Order Rescheduling PHC	Mar.22, 1999
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37	MSPB Order Canceling Hearing	Apr.02, 1999
38	MSPB Initial Decision - Dismissed	Apr.05, 1999

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1	Rec - Petition for Review - Appellant	May 11,1999
2	Acknowledge Receipt of PFR	May 13, 1999
3	Rec - Response Agency's Response to PFR	May 24, 1999
4	Rec - Document Denotation of Filing Procedure Time Frame	June 14, 1999 July 22, 1999
5	PFR Decision Issued - Appellant	

CERTIFICATE OF SERVICE

I hereby certify that on this date a certified index with a copy of the Board's final decision, was sent by regular mail to the Clerk, U.S. Court of Appeals for the Federal Circuit and that a copy of this index was sent by regular mail to the following:

PETITIONER
Patricia Bonton
P.O. Box 12372
Alexandria, LA 71315-2372

RESPONDENT
David Cohen, Director
Commercial Litigation Branch
Civil Division
ATTN: Classification Unit
1100 L Street, NW, Room 12124
Washington, DC 20530

OCT 07 1999
Date

Dorothy Plummer
Legal Assistant

NO._____

SUPERME COURT OF THE UNITED STATES

Patricia Bonton v. U.S. Merit Systems Protection Board; Oklahoma City Logistic Center Environmental Management Directorate Pollution Prevention Division ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Federal Circuit....

CERTIFICATE OF SERVICE

I (Patricia Bonton) hereby certify that the foregoing Petition On Writ Of Certiorari was serviced as specified below on this 31ST day of October 2000 is accurate and true upon occurrence.

CLERK OF THE COURT(40-copies)	METHODOF SERVICE
Supreme Court of the U.S.	EMAIL
ATTN: Clerk of the Court	FACSIMILE
1 First Street, N.E.	REGULAR MAIL
Washington, DC 20543	PRIORITY MAIL
PH: 479-3011(202)	
SOLICITOR GENERAL(3-copies)	
Solicitor General of the U.S.	EMAIL
Department of Justice	FACSIMILE
Attn: Solicitor General	REGULAR MAIL
950 Pennsylvania Ave., N.W.	EXPRESS MAIL
Washington, D.C. 20530-0001	
DEPARTMENT OF JUSTICE(3-copies)	
Department of Justice	EMAIL
Attn: Mr. Lee J. Freedom or Harold	FACSIMILE
D. Lester, Jr. or David Cohen	REGULAR MAIL
1100 L. Street, N.W., Room 12124	EXPRESS MAIL
Washington, D.C. 20530	
PH: 514-7300(202)	
GENERAL COUNSEL (3-copies)	
U.S. Merit Systems Protection Board	EMAIL
Attn: Office of the General Counsel,	FACSIMILE
Sara Rearden, Attorney	REGULAR MAIL
1120 Vermont Auenue, N.W.	EXPRESS MAIL
Washington, DC 20419	
PH: 652-6772(202), ext. 1279	

; As prescribe in the Sup.Ct. R. 29, 33.1, and Memorandum OCT.99 Term, the CERT.OF SVC. is set forth.

(d)_____
Oct. 31. 00
date

(s)_____
P.O. Box 12372; Alex. LA